

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

IDG, USA, LLC,

Plaintiff,

**NOTICE OF CROSS MOTION
AND MOTION**

v.

Civil No. 10 CV 0076-WMS

KEVIN J. SCHUPP,

Defendant.

**DEFENDANT'S NOTICE OF CROSS-MOTION TO DISMISS PLAINTIFF'S
COMPLAINT**

PLEASE TAKE NOTICE THAT the Defendant, KEVIN J. SCHUPP (hereinafter "Defendant"), by his attorneys, SCHRÖDER, JOSEPH & ASSOCIATES, LLP, will cross move this Honorable Court on April 5, 2010 at 9:00 AM before the Honorable William M. Skretny, pursuant to Rule 12 (c) of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Western District of New York, for an order dismissing the Complaint with prejudice and denying Plaintiff's Motion for an injunction and granting such other relief as the Court deems proper and just.

Defendant's cross-Motion is based upon the pleadings and attached documents which show: (1) Plaintiff's first and second causes of action for alleged breach of contract must fail because Plaintiff breached the terms of the employment agreement by not paying the stated base salary to Defendant with the result that the non-compete and non-solicitation provisions are not enforceable; (2) Plaintiff's third, fourth and fifth causes of action based upon alleged disclosure, use and theft of trade secrets and confidential information must fail because Plaintiff's Complaint does not identify any document containing confidential information or trade secrets that has been stolen or used and its Motion for a preliminary injunction makes only conclusory allegations with no explanation as to the factual basis for these claims; Defendant denies taking

any information from Plaintiff; and the documentary evidence attached to the Answer shows that pricing and quantities of services purchased by customers is not confidential but rather is shared by customers with sales representatives and manufacturer's listing prices are available on the Internet and otherwise; and (3) Plaintiff's Complaint fails to state a claim upon which relief can be granted as a matter of law.

In support of his Motion, Defendant hereby submits his Answer and attached Exhibits, the Complaint and attached Exhibits and the Affidavit of Kevin J. Schupp sworn to on February 8, 2010 and attached Exhibits, the papers submitted by the Plaintiff and Defendant with respect to the Plaintiff's Motion for preliminary injunction and the Defendant's Memorandum of Law in Support of His Motion to Dismiss and in opposition to Plaintiff's Motion for preliminary injunction.

Defendant hereby requests oral argument on the Motion herein and reserves the right to file Reply Papers in accordance with the scheduling order previously issued by the Court. A proposed order granting Defendant's Motion and denying Plaintiff's Motion for preliminary injunction is attached.

Dated: March 1, 2010
Buffalo, New York

Respectfully submitted,

SCHRÖDER, JOSEPH & ASSOCIATES, LLP

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**UNITED STATES DISTRICT COURT
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Civil No. 10 CV 0076-WMS

KEVIN J. SCHUPP,

Defendant.

ORDER

AND NOW, this ____ day of _____, 2010, upon consideration of Defendant Kevin J. Schupp's Cross-Motion pursuant to Rule 12 (c) of the Federal Rules of Civil Procedure for an order dismissing Plaintiff's Complaint with prejudice and Plaintiff's Motion for preliminary injunction pursuant to Federal Rule 65, the responses and replies thereto, it is hereby:

ORDERED that Defendant's Cross-Motion is granted and Plaintiff's Motion for a preliminary injunction is denied and the Complaint is dismissed with prejudice.

BY THE COURT:

Dated: _____

Hon. William D. Skretny, U.S.D.J.